

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

JAMES ANTHONY WILLIAMS,

Petitioner,

v.

Case No. 2:09-cv-88  
HON. R. ALLAN EDGAR

GARY CAPELLO,

Respondent.

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**MEMORANDUM AND ORDER**

Petitioner James Anthony Williams, a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d). On June 11, 2009, Magistrate Judge Greeley submitted his report and recommendation. [Doc. No. 2]. It is recommended that the habeas petition be denied and dismissed with prejudice on the ground it is time-barred by the one-year statute of limitations in 28 U.S.C. § 2244(d)(1)(A). It is further recommended that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2). *Slack v. McDaniel*, 529 U.S. 473 (2000).

Petitioner Williams filed an objection to the report and recommendation. [Doc. No. 12]. He argues that there should be equitable tolling of the statute of limitations because he claims to have diligently pursued his rights protected under the United States Constitution based on *Halbert v. Michigan*, 545 U.S. 605, 617 (2005). After reviewing the record *de novo*, the Court concludes that

the objection is without merit and it is **DENIED**. The Court agrees with the report and recommendation that petitioner Williams failed to diligently pursue his constitutional rights based on *Halbert*, 545 U.S. 605, and he is not entitled to equitable tolling of the statute of limitations.

Pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b) the Court **ACCEPTS and ADOPTS** the report and recommendation. The records shows that petitioner Williams did not timely file his 28 U.S.C. § 2254 habeas petition and it is time-barred by the statute of limitations provided in 28 U.S.C. § 2244(d)(1)(A). Accordingly, for the reasons expressed in the report and recommendation the petition for writ of habeas corpus brought under 28 U.S.C. § 2254 shall be **DENIED and DISMISSED WITH PREJUDICE**.

If petitioner Cable files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Reasonable jurists could not find it debatable whether the habeas petition has been properly dismissed on the ground it is time-barred by the statute of limitations provided in 28 U.S.C. § 2244(d)(1)(A).

A separate judgment will enter.

SO ORDERED.

Dated: November 13, 2009.

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE